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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA

Case No. 3:12-CR-00659-MO

v.

REAZ QADIR KHAN,

Defendant.

**GOVERNMENT'S RESPONSE TO
DEFENDANT'S FIRST MOTION FOR
PRETRIAL DETERMINATION
REGARDING APPROPRIATE JURY
INSTRUCTIONS: DEFENDANT'S
KNOWLEDGE AND INTENT**

The United States of America, by S. Amanda Marshall, United States Attorney for the District of Oregon, and through Ethan D. Knight and Charles F. Gorder, Jr., Assistant United States Attorneys, hereby responds to Defendant's First Motion for Pretrial Determination Regarding Appropriate Jury Instructions: Defendant's Knowledge and Intent, ECF No. 117.

I. This Motion Is Premature.

Under the current case litigation schedule, the parties' requested jury instructions, along with their trial memoranda, are to be simultaneously filed on February 9, 2015, with objections

thereto due two weeks later on February 23, 2015, and to be resolved, if possible, at the subsequent Pretrial Conference. (Am. Case Litigation Schedule 4, ECF No. 74). Filing requested jury instructions at that time, after the Court has entertained and presumably ruled upon numerous motions for discovery, to suppress, and to dismiss, as well as various motions *in limine*, makes logical sense. At that time, the shape of the ultimate issues to be litigated in this matter and the plans of the parties in that regard will, at a minimum, be somewhat formulated and proposed jury instructions can be drafted with those plans in mind. The trial memoranda filed by the parties at that time will educate the Court as to the issues and actual evidence to be presented at trial.

In the instant Motion, however, defendant has submitted one proposed jury instruction, in isolation from all other potential instructions, and asked the Court to adopt it without sufficient knowledge of the facts and evidence to be adduced at trial, and in advance of all of the rulings to be made between now and the date of the Pretrial Conference. The Court should not do so. This Motion should be denied and defendant will be free to submit this proposed instruction, along with all others, on February 9, 2015.

II. The Government Will Submit an Alternative Instruction at the Appropriate Time.

The Ninth Circuit's Model Criminal Jury Instructions do not cover either Title 18, United States Code, Section 2339A, the material support conspiracy charge in this case, or Title 18, United States Code, Section 956(a), the object offense of that conspiracy. Title 18, United States Code, Section 2339A is a complex statute and an instruction defining the elements of that offense should be crafted carefully. The instruction must properly explain the elements of the

offense as they apply to the facts in this case in language which a lay juror can understand. The instruction as currently submitted by defendant is confusing and overly complex and would not be appropriate in this matter. The government intends to file its requested instructions describing a 2339A conspiracy per the case litigation schedule. Should the Court feel it necessary to consider defendant's proposed instruction before that time, the government requests leave to file its own proposed instruction on the elements of the offense as alleged in the Indictment which will be more specifically tailored to the anticipated evidence at trial.

Dated this 14th day of October 2014.

Respectfully submitted,

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